

SUBCHAPTER II. ELECTION OFFICERS.

Article 3.

State Board of Elections.

§ 163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.

(a) There is established the State Board of Elections, which may be referred to as the "State Board" in this Chapter.

(b) The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 2019, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of the State Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the State Board shall be members of the same political party. The Governor shall appoint the members from a list of nominees submitted to the Governor by the State party chair of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board. Each party chair shall submit a list of four nominees who are affiliated with that political party. No person may serve more than two consecutive four-year terms.

(c) Any vacancy occurring in the State Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill the vacancy from a list of three nominees submitted to the Governor by the State party chair of the political party that nominated the vacating member as provided in subsection (b) of this section. The three nominees must be affiliated with that political party.

(d) At the first meeting held after new appointments are made, the members of the State Board shall take the following oath:

"I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain, and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law, so help me God."

(e) After taking the prescribed oath, the State Board shall organize by electing one of its members chair and another secretary.

(f) No person shall be eligible to serve as a member of the State Board who:

- (1) Holds any elective or appointive office under the government of the United States, the State of North Carolina, or any political subdivision thereof.
- (2) Is a candidate for nomination or election to any office.
- (3) Holds any office in a political party or organization.
- (4) Is a campaign manager or treasurer of any candidate in a primary or election.
- (5) Is currently an employee of the State, a community college, or a local school administrative unit.
- (6) Within the 48 months prior to appointment, has held any of the following positions with an organization that has engaged in electioneering in those 48 months:
 - a. Director, officer, or governing board member.
 - b. Employee.
 - c. Lobbyist registered under Chapter 120C of the General Statutes.

- d. Independent contractor.
- e. Legal counsel of record.
- (g) No person while serving on the State Board shall:
 - (1) Make a reportable contribution to a candidate for a public office over which the State Board would have jurisdiction or authority.
 - (2) Register as a lobbyist under Chapter 120C of the General Statutes.
 - (3) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.
 - (4) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum or ballot issue proposals.
 - (5) Solicit contributions for a candidate, political committee, or referendum committee.
 - (6) Serve as a member of any other State board, as defined in G.S. 138A-3. (1901, c. 89, ss. 5, 7; Rev., ss. 2760, 4300, 4301; C.S., ss. 5921, 5922; 1933, c. 165, s. 1; 1953, c. 428; 1967, c. 775, s. 1; 1975, c. 286; 1985, c. 62, ss. 1, 1.1; 2005-276, s. 23A.3; 2006-262, s. 4.2; 2013-381, s. 45.1(a); 2017-6, ss. 4(c), 7(a); 2018-2, s. 8(b); 2018-13, s. 5; 2018-146, ss. 3.1(a)-(c), 3.2(a).)

§ 163-20. Meetings of Board; quorum; minutes.

(a) Call of meeting. – The State Board of Elections shall meet at the call of the chairman whenever necessary to discharge the duties and functions imposed upon it by this Chapter. The chairman shall call a meeting of the Board upon the written application or applications of any two members thereof. If there is no chairman, or if the chairman does not call a meeting within three days after receiving a written request or requests from two members, any three members of the Board shall have power to call a meeting of the Board, and any duties imposed or powers conferred on the Board by this Chapter may be performed or exercised at that meeting, although the time for performing or exercising the same prescribed by this Chapter may have expired.

(b) Place of Meeting. – Except as provided in subsection (c), below, the State Board of Elections shall meet in its offices in the City of Raleigh, or at another place in Raleigh to be designated by the chairman. However, subject to the limitation imposed by subsection (c), below, upon the prior written request of any four members, the State Board of Elections shall meet at any other place in the State designated by the four members.

(c) Meetings to Investigate Alleged Violations of This Chapter. – When called upon to investigate or hear sworn alleged violations of this Chapter, the State Board of Elections shall meet and hear the matter in the county in which the violations are alleged to have occurred.

(d) Quorum. – A majority of the members constitutes a quorum for the transaction of business by the State Board of Elections. If any member of the Board fails to attend a meeting, and by reason thereof there is no quorum, the members present shall adjourn from day to day for not more than three days, by the end of which time, if there is no quorum, the Governor may summarily remove any member failing to attend and appoint his successor.

(e) Minutes. – The State Board of Elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the office of the State Board in Raleigh. (1901, c. 89, s. 7; Rev., ss. 2760, 4301, 4302; C.S., ss.

5922, 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1; 1973, c. 793, s. 3; c. 1223, s. 1; 2016-125, 4th Ex. Sess., s. 5(b); 2017-6, ss. 2, 3, 7(b); 2018-146, s. 3.1(a), (b).)

§ 163-21. Compensation of Board members.

Members of the State Board shall receive per diem, subsistence, and travel, as provided in G.S. 138-5 and G.S. 138-6. (1901, c. 89, s. 7; Rev., ss. 2760, 4301; C.S., s. 5922; 1933, c. 165, s. 1; 1967, c. 775, s. 1; 2017-6, ss. 4(c), 7(c); 2018-2, s. 8(b); 2018-13, s. 5; 2018-146, ss. 3.1(a)-(c), 3.2(b).)

§ 163-22. Powers and duties of State Board of Elections.

(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(b) From time to time, the State Board shall publish and furnish to the county boards of elections and other election officials a sufficient number of indexed copies of all election laws and State Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials explanatory of primary and election laws and procedures as the State Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them as to the proper methods of conducting primaries and elections. The State Board shall require such reports from the county boards and election officers as are provided by law, or as are deemed necessary by the State Board, and shall compel observance of the requirements of the election laws by county boards of elections and other election officers. In performing these duties, the State Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county board member affected and give that member an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections.

(d) The State Board of Elections shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The State Board shall furnish to the county boards of elections the registration application forms required pursuant to G.S. 163-82.3. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of

Elections may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms.

(f) The State Board of Elections shall prepare, print, distribute to the county boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The State Board shall instruct the county boards of elections as to the printing of county and local ballots.

(g) The State Board of Elections shall certify to the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the State Board and whose names are required to be printed on county ballots.

(h) It shall be the duty of the State Board of Elections to tabulate the primary and election returns, to declare the results, and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the State Board.

(i) The State Board of Elections shall make recommendations to the Governor and legislature relative to the conduct and administration of the primaries and elections in the State as it may deem advisable.

(j) Notwithstanding the provisions of any other section of this Chapter, the State Board of Elections is empowered to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct, county, municipality or electoral district over whose elections it has jurisdiction or for whose elections it has responsibility.

(j1) Notwithstanding G.S. 153A-98 or any other provision of law, all officers, employees, and agents of a county board of elections are required to give to the State Board of Elections, upon request, all information, documents, and data within their possession, or ascertainable from their records, including any internal investigation or personnel documentation and are required to make available, upon request pursuant to an investigation under subsection (d) of this section, any county board employee for interview and to produce any equipment, hardware, or software for inspection. These requirements are mandatory and shall be timely complied with as specified in a request made by any four members of the State Board.

(k) Notwithstanding the provisions contained in Article 20 or Article 21A of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election, except if the law requires ballots to be available for mailing 60 days before the general election, and they are not ready by that date, the State Board of Elections shall allow the counties to mail them out as soon as they are available.

(l) Notwithstanding any other provision of law, in order to obtain judicial review of any decision of the State Board of Elections rendered in the performance of its duties or in the exercise of its powers under this Chapter, the person seeking review must file his petition in the Superior Court of Wake County.

(m) The State Board of Elections shall provide specific training to county boards of elections regarding rules for registering students.

(n) The State Board of Elections shall promulgate minimum requirements for the number of pollbooks, voting machines and curbside ballots to be available at each precinct, such that more of such will be available at general elections and a sufficient number will be available to allow

voting without excessive delay. The State Board of Elections shall provide for a training and screening program for chief judges and judges. The State Board shall provide additional testing of voting machines to ensure that they operate properly even with complicated ballots.

(o) The State Board of Elections shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting.

(o1) The State Board of Elections shall include in all forms prepared by the Board a prominent statement that submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 of the General Statutes.

(p) The State Board of Elections may assign responsibility for enumerated administrative matters to the Executive Director by resolution, if that resolution provides a process for the State Board to review any administrative decision made by the Executive Director.

(q) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.

(r) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan adopted by the appropriate unit of local government under statutory or local act authority. (1901, c. 89, ss. 7, 11; Rev., ss. 4302, 4305; 1913, c. 138; C.S., ss. 5923, 5926; 1921, c. 181, s. 1; 1923, c. 196; 1933, c. 165, ss. 1, 2; 1945, c. 982; 1953, c. 410, s. 2; 1967, c. 775, s. 1; 1973, c. 47, s. 2; c. 793, s. 2; 1975, c. 19, s. 65; 1977, c. 661, s. 6; 1979, c. 411, s. 1; 1981, c. 556; 1985 (Reg. Sess., 1986), c. 986, ss. 2, 3; 1987, c. 485, ss. 2, 5; c. 509, s. 9; c. 642, s. 3; 1989, c. 635, s. 5; 1991, c. 727, ss. 5.2, 7; 1993 (Reg. Sess., 1994), c. 762, s. 12; 1995, c. 509, s. 114; 1999-424, s. 7(a); 2001-398, s. 4; 2009-537, s. 10; 2009-541, s. 1; 2011-31, s. 15; 2011-182, s. 3; 2016-125, 4th Ex. Sess., s. 20(b); 2017-6, s. 3; 2018-13, s. 3.2(a), (b); 2018-144, s. 1.4A; 2018-146, s. 3.1(a), (b).)

§ 163-22.1. Repealed by Session Laws 2001-398, s. 2, effective January 1, 2002.

§ 163-22.2. Power of State Board to promulgate temporary rules and regulations.

In the event any portion of Chapter 163 of the General Statutes or any State election law or form of election of any county board of commissioners, local board of education, or city officer is held unconstitutional or invalid by a State or federal court or is unenforceable because of objection interposed by the United States Justice Department under the Voting Rights Act of 1965 and such ruling adversely affects the conduct and holding of any pending primary or election, the State Board of Elections shall have authority to make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable so long as they do not conflict with any provisions of this Chapter 163 of the General Statutes and such rules and regulations shall become null and void 60 days after the convening of the next regular session of the General Assembly. The State Board of Elections shall also be authorized, upon recommendation of the Attorney General, to enter into agreement with the courts in lieu of protracted litigation until such time as the General Assembly convenes. (1981, c. 741; 1982, 2nd Ex. Sess., c. 3, s. 19.1; c. 1265, ss. 1, 2; 1985, c. 563, s. 15; 1986, Ex. Sess., c. 3, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-22.3. State Board of Elections littering notification.

At the time an individual files with the State Board of Elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, or 163-294.2, is certified to the State Board of Elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, is certified to the State Board of Elections by a new political party as that party's nominee pursuant to G.S. 163-98, qualifies with the State Board of Elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates a candidacy with the State Board of Elections pursuant to any statute or local act, the State Board of Elections shall notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156, and the rules adopted by the Department of Transportation pursuant to G.S. 136-18. (2001-512, s. 7; 2017-3, s. 3; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-23. Powers of chair in execution of Board duties.

In the performance of the duties enumerated in this Chapter, the Chair of the State Board shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. Upon the written request or requests of two or more members of the State Board, the Chair shall issue subpoenas for designated witnesses or identified papers, books, records, and other evidence. In the absence of the Chair or upon the Chair's refusal to act, any two members of the State Board may issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. In the absence of the Chair or upon the Chair's refusal to act, any member of the State Board may administer oaths. (1901, c. 89, s. 7; Rev., s. 4302; C.S., s. 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1; 1973, c. 793, s. 4; 2017-6, ss. 4(c), 7(d); 2018-146, ss. 3.1(a), (b), 3.2(c).)

§ 163-24. Power of State Board of Elections to maintain order.

The State Board of Elections shall possess full power and authority to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of the State Board of Elections or its chairman, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff to whom the same shall be delivered, or if a sheriff shall not be present, or shall refuse to act, by any other person who shall be deputed by the State Board of Elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar (\$200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C.S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1; 1995, c. 379, s. 14(e); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-25. Authority of State Board to assist in litigation.

The State Board of Elections shall possess authority to assist any county board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board

of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of this Chapter has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in the Attorney General's discretion, recommend that private counsel be employed.

If the Attorney General recommends employment of private counsel, the State Board may employ counsel with the approval of the Governor. (1969, c. 408, s. 1; 1973, c. 793, s. 6; 1983, c. 324, s. 2; 2011-31, s. 16; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-26. Executive Director of State Board of Elections.

There is hereby created the position of Executive Director of the State Board, who shall perform all duties imposed by statute and such duties as may be assigned by the State Board. (1973, c. 1272, s. 4; 2001-319, s. 11; 2017-6, ss. 4(c), 7(e); 2018-146, ss. 3.1(a), (b), 3.2(d).)

§ 163-27. Executive Director to be appointed by State Board.

(a) The State Board shall appoint an Executive Director for a term of two years with compensation to be determined by the Office of State Human Resources.

(b) The Executive Director shall serve beginning May 15 after the first meeting held after new appointments to the State Board are made, unless removed for cause, until a successor is appointed.

(c) The Executive Director shall be responsible for staffing, administration, and execution of the State Board's decisions and orders and shall perform such other responsibilities as may be assigned by the State Board.

(d) The Executive Director shall be the chief State elections official. (1973, c. 1409, s. 3; 1985, c. 62, s. 2; 2001-319, s. 11; 2017-6, ss. 4(c), 7(f); 2018-146, ss. 3.1(a), (b), 3.2(e).)

§ 163-27.1. Emergency powers.

(a) The Executive Director, as chief State elections official, may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by any of the following:

- (1) A natural disaster.
- (2) Extremely inclement weather.
- (3) An armed conflict involving Armed Forces of the United States, or mobilization of those forces, including North Carolina National Guard and reserve components of the Armed Forces of the United States.

In exercising those emergency powers, the Executive Director shall avoid unnecessary conflict with the provisions of this Chapter. The Executive Director shall adopt rules describing the emergency powers and the situations in which the emergency powers will be exercised.

(b) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.

(c) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of

local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan adopted by the appropriate unit of local government under statutory or local act authority.

(d) Under no circumstances shall the Executive Director or the State Board of Elections have the authority to do any of the following:

- (1) Deliver absentee ballots to an eligible voter who did not submit a valid written request form for absentee ballots as provided in G.S. 163-230.1 and G.S. 163-230.2.
- (2) Order an election to be conducted using all mail-in absentee ballots. (1999-455, s. 23; 2001-319, s. 11; 2011-183, s. 110; 2016-125, 4th Ex. Sess., s. 20(d); 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2020-17, s. 6.)

§ 163-27.2. Criminal history record checks of current and prospective employees of the State Board and county directors of elections.

(a) As used in this section, the term "current or prospective employee" means any of the following:

- (1) A current or prospective permanent or temporary employee of the State Board or a current or prospective county director of elections.
- (2) An employee or agent of a current or prospective contractor with the State Board.
- (3) Any other individual otherwise engaged by the State Board who has or will have the capability to update, modify, or change elections systems or confidential elections or ethics data.

(b) A criminal history record check shall be required of all current or prospective permanent or temporary employees of the State Board and all current or prospective county directors of elections, which shall be conducted by the Department of Public Safety as provided in G.S. 143B-968. The criminal history report shall be provided to the Executive Director, who shall keep all information obtained pursuant to this section confidential to the State Board, as provided in G.S. 143B-968(d). A criminal history report provided under this subsection is not a public record under Chapter 132 of the General Statutes.

(c) If the current or prospective employee's verified criminal history record check reveals one or more convictions, the conviction shall constitute just cause for not selecting the person for employment or for dismissing the person from current employment. The conviction shall not automatically prohibit employment.

(d) A prospective employee may be denied employment or a current employee may be dismissed from employment for refusal to consent to a criminal history record check or to submit fingerprints or to provide other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(e) A conditional offer of employment or appointment may be extended pending the results of a criminal history record check authorized by this section.

(f) A county board of elections shall require a criminal history record check of all current or prospective employees of the county board of elections, as defined in G.S. 163-37.1(a)(1), who have or will have access to the statewide computerized voter registration system maintained under G.S. 163-82.11 and for any additional position or function as the State Board may designate. The county director of elections shall provide the criminal history record of all current or prospective

employees of the county board of elections required by this subsection or in designated positions to the Executive Director and State Board.

(g) Neither appointment as a precinct official or assistant under Article 5 of this Chapter nor employment at a one-stop early voting location shall require a criminal history record check unless the official, assistant, or employee performs a function designated by the State Board pursuant to subsection (f) of this section. (2018-13, s. 1(c); 2018-146, s. 3.1(a), (b).)

§ 163-28. State Board of Elections independent agency.

The State Board of Elections shall not be placed within any principal administrative department. The State Board shall exercise its statutory powers, duties, functions, and authority and shall have all powers and duties conferred upon the heads of principal departments under G.S. 143B-10. (1973, c. 1409, s. 2; 2017-6, ss. 4(c), 7(g); 2018-146, ss. 3.1(a), (b), 3.2(f).)

§ 163-29. Reserved for future codification purposes.